IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 6683 OF 2004

Balkrishna Bhikaji Ghadi ..... Petitioner.

versus

Mrs. Indira Rani through her C.A.
Ugrasen Nandlal Punjabi .... Respondent.

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Shri S.G. Deshmukh for the petitioner.

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CORAM ; R.M.S. KHANDEPARKAR, J.

DATED; 6TH DECEMBER, 2004.

P.C.;

1. Heard the learned advocate for the petitioner.

2. The petitioner challenges the order passed by the lower appellate court setting aside the dismissal of the eviction suit, thereby ordering eviction of the petitioner from suit premises on the ground of default in payment of rent. The grievance of the petitioner is confined to only one ground namely that there was no service of notice under section 12(2) of the Rent Act prior to institution of the suit for eviction.

3. Placing reliance in the decision in the matter of **Lalman Ramnath Tiwari Vs. Bhimrao Govind Pawar reported in 2001(2) ALL MR 415** the learned advocate for the petitioner submitted that it was necessary for the landlord to examine the postman to establish the contention about service of intimation to the tenant about the notice in question and the landlord had failed to establish the same. The lower appellate court was not justified in interfering with the decree of dismissal of the suit.

4. It is to be noted that the decision in Lalmani's case was totally in different set of facts wherein the notice was issued under certificate of posting and not by way of registered letter. Besides, the said judgment is clearly distinguishable as having been delivered in the peculiar set of facts, different from those of the case in hand and as has been explained in the matter of **David K.N. Vs. S.R.Chaubey reported in 2003 (3) ALL MR 511.** Placing reliance upon various decisions of the Apex Court, it has been clearly ruled that mere denial of receipt of notice by tenant is not sufficient to rebut the presumption arising under section 28 of the Bombay Central Clauses Act, regarding due service of notice/summons upon the addressee, once it is established that such notice was sent by

registered post. In case in hand undisputably the notice under section 12(3) of the Rent Act was sent by registered post and records clearly disclosed that the post man had given intimation about such notice at the address of the petitioner and yet no steps were taken by the petitioner to establish about non service of such intimation to the petitioner. The burden was squarely upon the petitioner to disprove the service of notice and the petitioner having failed to discharge the said burden, the lower appellate court has rightly set aside the finding regarding service of notice which was arrived at by the trial court. Hence the finding being clearly borne out from the record and in accordance with the provisions of law, does not warrant any interference under Article 227 of the Constitution of India. Petition therefore fails and it is therefore rejected.

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